

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NATIONAL COLLEGIATE LOAN TRUST
2006-3, 2007-4, a Delaware Statutory Trust,

Plaintiff,

Case No. 14-13638
Hon. Lawrence P. Zatkoff

v.

MARC D. SMITH, and CAROLYN U. SMITH,
Defendants.

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on September 30, 2014

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

Defendants Marc Smith and Carolyn Smith filed a Notice of Removal [dkt 1] on September 19, 2014. Defendant Marc Smith filed an application to proceed *in forma pauperis* [dkt 2] the same day. For the following reasons, Defendant Marc Smith's request to proceed *in forma pauperis* is DENIED.

II. ANALYSIS

Defendant Marc Smith has filed an application to proceed without prepayment of fees. Under 28 U.S.C. § 1915(a), "any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor." The

reference to assets of “such prisoner” is likely a typographical error; thus, § 1915(a) applies to all natural persons. *See Floyd v. U.S. Postal Serv.*, 105 F.3d 274 (6th Cir. 1997). If a motion to proceed without prepayment of fees is filed and accompanied by a facially-sufficient affidavit, the Court should allow the complaint to be filed. *See Gibson v. R.G. Smith Co.*, 915 F.2d 260, 261 (6th Cir. 1990) (citing *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981)). Only after the complaint is filed is it tested to determine whether it is frivolous or fails to state a claim. *See id.* at 261.

The Court, having reviewed Defendant Marc Smith’s application, has determined that he is not entitled to proceed *in forma pauperis*. The financial information in the application does not indicate whether Defendant Carolyn Smith is unable to pay the filing fee; thus, the application is facially-insufficient. Accordingly, the Court DENIES Defendant Marc Smith’s application to proceed *in forma pauperis*.

III. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that Defendant Marc Smith’s request to proceed *in forma pauperis* [dkt 2] is DENIED without prejudice.

IT IS SO ORDERED.

Date: September 30, 2014

s/Lawrence P. Zatkoff
Hon. Lawrence P. Zatkoff
U.S. District Court